IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.02.2005

CORAM

THE HON`BLE MR.JUSTICE P.K.MISRA

WRIT PETITION Nos. 1957 to 1960 OF 1998

The Management,
Burn Standard Company Limited.,
Salem - 5. ..Petitioner in all the W.Ps.

vs.

1. The Presiding Officer,
   Labour Court, Salem ..1st respondent in all the W.Ps.

2. N.Subramani ..2nd respondent in W. P.No. 1957/98

2. Kandayamma Chinnathambi ..2nd respondent in W.P.No.1058/98

2. Lakhsmi Palani ..2nd respondent in W.P.No.1959/98

2. Valliamma Lakshmanan)
3. Unnamalai Kandasamy) ..respondents 2 to 5 in W.P.Nos.1960/98
4. Lakshmi)
5. Marimuthu)

Writ Petition filed under Article 226 of Constitution of India praying this court to issue a writ of Certiorari calling for the records in C.P.No.231/96, C.P.No.224/1996, C.P.No.200/96, C.P.Nos.18/96, 21/96, 22/96 and 25/96 respectively on the file of the Labour Court, Salem, the first respondent herein and quash the orders dated 14.2.1997, 11.2.1997, 14.2.1997 and 24.1.1997 respectively passed therein.

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For petitioner : Mr.M.R.Raghavan

For 2nd respondents : Mr.J.Narayanamurthy
in W.P.1957,1958,1959 and
for respondents 2 to 5
in W.P.1960/1998

ORDER

Heard the learned counsel appearing for the parties.

2. The Management of Burn Standard Company Limited has filed these Writ Petitions challenging the orders of the Labour Court, directing payment of additional amount payable on account of the Voluntary Retirement of the present Respondent No.2 under the Voluntary Retirement Scheme.

3. In the claim made before the Labour Court, it was contended that the date of birth of the workmen was recorded as 31.12.1940 and on that basis while calculating the years available on the voluntary retirement Scheme, the calculation should have been made. However, the calculation was erroneously made by calculating the retirement to be in the year 1996. Before the Labour Court, an objection was filed by the present petitioner, apart from raising the question of maintainability of such an application under Section 33(C)(2) of the Industrial Disputes Act and it was contended that since the present second respondent had employed in the year 1956, it must be assumed that he must be atleast 18 years of age on that date and therefore so calculating, he could have only 40 more years to serve and therefore the age of retirement was considered to be in the year 1996.

4.The Labour Court relied upon the identity card issued by the Management wherein, the age of the Claimant had been indicated and the date of birth is mentioned as 31.12.1940. Therefore, the Labour Court came to the conclusion that since the document issued by the Company itself indicated the age, there was no doubt about the age of the retirement and on that basis, the payment made towards Voluntary Retirement was not in accordance with the scheme. Accordingly, a direction was given.

5. In the present Writ Petitions, the main contention raised by the learned counsel for the petitioner is relating to the question of estoppel and waiver. It is contended by the learned counsel for the petitioner that since the workmen in question had been issued a receipt in full and final settlement of the benefits available under the Voluntary Retirement Scheme, they were estopped from raising any further claim.

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6. In the aforesaid context, he has placed reliance upon ANDHRA LAUNDRY (PROPRIETOR, R.A.MASDILAMANI), MADRAS VS.ADDITIONAL LABOUR COURT, MADRAS reported in 1968 1 Labour Law Journal, page 356. In the aforesaid decision of the Madras High Court, a claim under Sec.33(C)(2) of the Industrial Disputes Act was filed before the Industrial Forum, claiming computation of the benefits of retrenchment compensation, gratuity, leave wages, etc. Before the Labour Court itself, the Management took this specific plea that the workmen were paid closure compensation, gratuity and arrears of wages and each of the workmen had passed a stamped receipt in full and final settlement of the claim and therefore, it was not open to them to go behind the same and make further claims on the management. However, the Labour Court did not accept this contention by coming to the conclusion that the workmen had received the amounts under protest. Being aggrieved by the decision of the Labour Court, the Management filed a Writ Petition. The High Court came to the conclusion that in fact stamped receipts had been issued, therefore, the workmen were estopped from raising the question.

7. Even though prima facie, this question may be applicable, I am not inclined to accept the contention of the petitioner in the present case. It is well known that question of estoppel or waiver is the question of fact and law. In the present case, no such question had been specifically raised by the Management before the Labour Court. If such a question would have been raised at this stage in that case, the workmen could have given an explanation regarding the receipt of the amount. Since the question was not raised before the Original Forum, such a question cannot be permitted to be raised for the first time in a Writ Petition.

8. It is quite well settled that in the Writ Petition, questions which are agitated before the Inferior Tribunal/Court can only be agitated and new question, more particularly when such question is depending upon factual aspect, cannot be permitted to be raised. In such view of the matter, this Contention cannot be accepted.

9. The learned counsel for the petitioner has relied upon a decision of GN.MODH.KHAN VS.STATE OF JAMMU AND KASHMIR reported in 1997 1997 LAB.I.C. 3465. The said decision of the Jammu and Kashmir High Court relate to the question of the correction of date of birth of an employee in Government Service. Since the person had continuously worked for 42 years, the employer, taking into account the date of entry into service, had held that on completion of 42 years of service, it must be taken that he attained the age of superannuation, as there was prohibition under the relevant Government Service Rule relating to employment of a

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person who is below the age of 18 years. In my considered opinion, the aforesaid decision is also distinguishable and not applicable to the present case. It is to be borne in mind that in the present case, there is nothing to indicate that there was any specific prohibition for employment of any person below the age of 18 years.

10. The learned counsel for the petitioner has placed reliance upon the provisions of Sec.67 of the Factories Act, 1948. Sec.67 of the said Act prohibits the employment of any child who has not completed his fourteenth year. On the other hand, Section 68 contemplates that a child who has completed his fourteenth year or an adolescent can be employed subject to certain conditions relating to grant of certificate of fitness; in other words, there is no absolute ban of employment of a person who is below 15 years and in certain conditions, a person who is an adolescent could be employed. An adolescent, in the Act, has been defined to 'a person who has completed 15 years but has not completed 18 years of age'.

11. In the absence of any specific proof, it is difficult for deciding at this distant point of time as to whether the person who has been employed was an adolescent or not. The Management was not in a position to throw light on this point. When the matter was pending before the Labour Court, the Management has not chosen to produce any record to indicate that no person below the age of 18 years was in fact employed in the said Industry. In such view of the matter, even assuming that the Factories Act was applicable, in the absence of any specific prohibition, it is difficult to come to the conclusion that merely because a person was employed, it must be taken that he was 18 years at that stage. The decision of Jammu and Kashmir related to employment in Government service, where there is a specific requirement that only a person who had completed 18 years can be employed. Therefore, such a decision is distinguishable and is not applicable to the present case.

12. The learned counsel for the petitioner also contended that Section 33(C)(2) of the Industrial Disputes Act is in the nature of Execution Proceedings and rights of the parties are not supposed to be decided in such a proceeding. In the present case, the question was relating to the computation of the years as per the Voluntary Retirement Scheme. Since the age of the workmen was indicated in the document prepared by the Management, it cannot be stated that there was any serious dispute about the age, once the age was accepted and nothing remains to be accepted for the computation of benefits available under this scheme. On such view of the matter, it cannot be stated that an Application under Section 33(C)(2) was not maintainable in the peculiar facts and circumstances of the present case.

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13. The learned counsel for the petitioner has submitted that in all the four cases, the date of birth has been indicated as 31.12.1940. The same date of birth in respect of four different workmen itself is suspicious. I do not think that, on the basis of such submission, the Writ Petitions can at all be entertained. It is not unknown that several persons in the very same department can have the same date of birth.

14. Moreover, in this context, the learned counsel for the second respondent submitted that it was a convention that if the date of birth was not known, the last date of the month is to be taken the date of birth and if the month of the birth was not known, the last month of the year is to be taken as the date of birth. No such convention had been followed. Whether or not such convention was in existence, since the document issued by the Management itself indicated the date of birth, the submission made by the petitioner cannot be accepted.

15. For the aforesaid reasons, the Writ Petitions are dismissed.

Ajr.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Presiding Officer,
   Labour Court, Salem

+ 1 cc to Mr.M.R.Raghavan, Advocate SR 7467

W.P.NOS.1957 TO 1960 OF 1998

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